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101ST CONGRESS
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SENATE

REPORT
101-498

PROVIDING FOR THE TRANSFER OF THE PLATORO RESERVOIR TO THE CONEJOS WATER CONSERVANCY DISTRICT OF THE STATE OF COLORADO, AND FOR THE PROTECTION OF FISH HABITAT ON THE CONEJOS RIVER

OCTOBER 5 (legislative day, OCTOBER 2), 1990.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1118]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1118) to provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District of the State of Colorado, and for the protection of fish habitat on the Conejos River, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FINDINGS AND DECLARATIONS.

The Congress finds and declares the following:

(1) Platoro Dam and Resevoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project was built in 1951 and for all practical purposes has not been usable because of the constraints imposed by the Rio Grand Compact of 1939 on the use of the Rio Grand River among the States of Colorado, New Mexico and Texas.

(2) The usefulness of Platoro Reservoir under future compact compliance depends upon the careful conservation and wise management of water and requires the operation of the reservoir project in conjunction with the privately owned water rights of the local water users.

(3) It is in the best interest of the people of the United States to:

(A) transfer operation, maintenance and replacement responsibility for the Platoro Dam and Reservoir to the Conejos Water Conservancy District of the State of Colorado, which is the local water user district with repayment responsibility to the United States, and the local representative of the water users with privately owned water rights;

(B) relieve the people of the United States from further financial risk or obligation in connection with the collection of construction charge repayments and annual operation and maintenance payments for the Platoro Dam and Reservoir by providing for payment of a one-time fee to the United States in lieu of the scheduled annual payments and termination of any further repayment obligation to the United States pursuant to the ex-

S313-58

isting repayment contract between the United States and the District (Contract No. Ilr-1529, as amended); and

(C) determine such one time fee, taking into account the assumption by the District of all of the operations and maintenance costs associated with the reservoir, including the existing Federal obligation for the operation and maintenance of the reservoir for flood control purposes, and taking into account 50 percent sharing of the cost of maintaining a minimum stream flow as provided in section 2(d) of this Act.

SEC. 2. TRANSFER OF OPERATION AND MAINTENANCE RESPONSIBILITY OF PLATORO RESERVOIR.

(a) IN GENERAL.—The Secretary is authorized and directed to undertake the following:

(1) Accept a one-time payment of $450,000 from the District in lieu of the repayment obligation of paragraphs 8(d) and 11 of the Repayment Contract between the United States and the District (No. Ilr-1529) as amended.

(2) Enter into an agreement for the transfer of all of the operation and maintenance functions of the Platoro Dam and Reservoir, including the operation and maintenance of the reservoir for flood control purposes, to the District. The agreement shall provide—

(A) that the District will have the exclusive responsibility for operations and the sole obligation for all of the maintenance of the reservoir in a satisfactory condition for the life of the reservoir subject to review of such maintenance by the Secretary to ensure compliance with reasonable operation, maintenance and dam safety requirements as they apply to Platoro Dam and Reservoir under Federal and State law; and

(B) that the District shall have the exclusive use of all associated facilities, including outlet works, remote control equipment, spillway, and land and buildings in the Platoro townsite.

(b) TITLE.—Title to the Platoro Dam and Reservoir and all associated facilities shall remain with the United States, and authority to make recreational use of Platoro Dam and Reservoir shall be under the control and supervision of the United States Forest Service, Department of Agriculture.

(c) AMENDMENTS TO CONTRACT.—The Secretary is authorized to enter into such other amendments to such Contract No. Ilr-1529, as amended, necessary to facilitate the intended operations of the project by the District. All applicable provisions of the Federal reclamation laws shall remain in effect with respect to such contract.

(d) CONDITIONS IMPOSED UPON THE DISTRICT.—The transfer of operation and maintenance responsibility under subsection (a) shall be subject to the following conditions:

(1)(A) The District will use its best efforts to operate the Platoro Dam and Reservoir in such a way as to provide—

(i) that releases or bypasses from the reservoir flush out the channel of the Conejos River periodically in the spring or early summer to maintain the hydrologic regime of the river; and

(ii) that any releases from the reservoir contribute to even flows in the river as far as possible from October 1 to December 1 so as to be sensitive to the brown trout spawn.

(B) Operation of the Platoro Dam and Reservoir by the District for water supply uses (including storage and exchange of water rights owned by the District or its constituents), interstate compact and flood control purposes shall be senior and paramount to the channel flushing and fishery objectives referred to in subparagraph (A).

(2)(A) The District will provide and maintain a permanent pool in the Platoro Reservoir for fish, wildlife, and recreation purposes, in the amount of 1,800 acre-feet, including the initial filling of the pool and periodic replenishment of seepage and evaporation loss.

(B) If, the addition to the pool referred to in subparagraph (A), the District commits to storage of water up to 1,200 acre-feet for the purposes of guaranteeing instream flows below the dam, the District will hold such additional storage and water to enhance the permanent pool unless and until needed for instream flow releases.

(3) The District shall maintain releases of water from the Platoro Reservoir or at least 5 cubic feet per second during the months of October through April. The District has previously agreed with the State of Colorado to subordinate its rights to those of the State to maintain instream flows of 40 cubic feet per second, or natural inflow if less, during the months of May through September.

(e) FLOOD CONTROL MANAGEMENT.—The Secretary of the Army, acting through the Chief of Engineers, shall retain exclusive authority over Platoro Dam Reservoir for flood control purposes and shall direct the District in the operation of the dam for such purposes. To the extent possible, management by the Secretary of the Army under this subsection shall be consistent with the water supply use of the reservoir and with the administration of the Rio Grande Compact of 1939 by the Colorado State Engineer. The Secretary of the Army shall enter into a Letter of Understanding with the District and the United States Bureau of Reclamation prior to transfer of operations which details the responsibility of each party and specifies the flood control criteria for the reservoir.

(f) COMPLIANCE WITH COMPACT AND OTHER LAWS.—The transfer under Section 2 shall be subject to the District's compliance with the Rio Grande Compact of 1939 and all other applicable laws and regulations, whether of the State of Colorado or of the United States.

SEC. 3. DEFINITIONS.

As used in this Act—

(1) the term "District" means the Conejos Water Conservancy District of the State of Colorado;

(2) the term "Federal reclamation laws" means the Act of June 17, 1902 (32 Stat. 388), and Acts supplementary thereto and amendatory thereof;

(3) the term "Platoro Reservoir" means the Platoro Dam and Reservoir of the Platoro Unit of the Conejos Division of the San Luis Valley Project; and

(4) the term "Secretary" means the Secretary of the Interior.

PURPOSE OF THE MEASURE

S. 1118, as amended, would authorize the Secretary of the Interior to transfer operation and maintenance responsibility for the Platoro Dam and Reservoir to the Conejos Water Conservancy District of the State of Colorado, in exchange for a one-time payment of $450,000 in lieu of the district's current repayment obligations.

BACKGROUND AND NEED

Platoro Dam and Reservoir are features of the Conejos Unit of the Bureau of Reclamation's San Luis Valley Project, located in the south-central portion of Colorado. The other principal feature of the San Luis Valley Project is the Closed Basin Division.

Platoro Dam, authorized in 1940 and completed in 1951, is on the Conejos River about 1 mile above the town of Platoro, Colorado. It is an earthfill structure with a storage capacity of 59,570 acre-feet. The facility is operated pursuant to a contract between the Bureau and the Conejos Water Conservancy District which provides for repayment of 60 percent of the construction cost, or $2.33 million, representing the portion of project cost allocated to irrigation. The remaining 40 percent of costs was allocated to flood control. Operation and maintenance costs are split 60–40 between the district and the Bureau. An amendment to the original contract obligates the district to repay costs a schedule that would vary by the amount of water available for use in storage.

Actual repayment has been minimal as have been the benefits received by the district. Because of its interstate obligations under the Rio Grande Compact, the State of Colorado has generally been unable to store water at Platoro. Following years of inter- and intra-state litigation over compact obligations, it has become clear to the district that traditional water use and management practices in the area will have to change in order for them to have water available to store at Platoro Reservoir.

The district believes that the efficiency improvements and investments that they will be required to make would be made more easily if the district had a greater measure of control over the dam and reservoir and relief from present contract obligations which, in the district's view, create a financial disincentive to use of Platoro Dam and Reservoir for storage of project and non-project water.

LEGISLATIVE HISTORY

S. 1118 was introduced by Senators Armstrong and Wirth on June 2, 1989. The Subcommittee on Water and Power conducted a hearing on S. 1118 on July 24, 1990.

At the business meeting on September 19, 1990, the Senate Committee on Energy and Natural Resources ordered S. 1118, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 19, 1990, by a majority vote of a quorum present, recommends that the Senate pass S. 1118 if amended, as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nays, as follows:

YEAS	NAYS
Mr. Johnston [1]	
Mr. Bumpers	
Mr. Ford	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Conrad	
Mr. Heflin [1]	
Mr. Akaka [1]	
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Murkowski	
Mr. Nickles [1]	
Mr. Burns	
Mr. Garn [1]	
Mr. McConnell	

[1] Indicates voted by proxy.

COMMITTEE AMENDMENTS

The Committee's substitute amendment to S. 1118 reflect the determination of all parties that, while the transfer proposed by the bill is in the public interest, title to Platoro Dam and Reservoir and associated facilities should remain with the United States.

SECTION-BY-SECTION ANALYSIS

Section 1 states a series of findings concerning public benefits associated with the transfer of operation, maintenance, and replace-

ment responsibility for the Platoro Dam and Reservoir from the Secretary of the Interior to the Conejos Water Conservancy District.

Section 2 authorizes the Secretary to accept a one-time payment of $450,000 from the Conejos Water Conservancy District in lieu of the district's current repayment obligation and in exchange for transfer of Platoro Dam and Reservoir operation and maintenance responsibilities to the district. This section also provides that title to the dam and reservoir will remain with the United States, and authority to manage recreational use of the dam and reservoir will be under the control of the use of the dam and reservoir will be under the control of the U.S. Forest Service. Subsection 2(d) imposes a series of conditions on the district relating to Conejos River operations, including terms intended to protect and improve certain fisheries, and terms intended to ensure fulfillment of water rights, interstate compact obligations, and flood control requirements. The Committee emphasizes that this Act, and the transfer authorized by this Act, are not intended and should not be interpreted to affect in any way the district's responsibilities under the Rio Grande Compact of 1939.

Section 3 provides certain definitions for the purpose of the Act.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 2, 1990.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1118, a bill to provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District of the State of Colorado, and for the protection of fish habitat on the Conejos River, as ordered reported by the Senate Committee on Energy and Natural Resources on September 19, 1990. We estimate that enactment of S. 1118 would result in additional receipts to the federal government totaling $450,000 in 1991.

S. 1118 would transfer responsibility for the operation and maintenance of the Platoro Reservoir to the Conejos Water Conservancy District. Title to the reservoir would be retained by the federal government and certain conditions for operating the reservoir would be placed on the district. The district also would be relieved of its current obligation to repay certain costs in exchange for a payment of $450,000 to the U.S. government.

Information from the Bureau of Reclamation indicates that the federal government is unlikely to collect repayments on the district's current $2.3 million obligation. We therefore estimate that the $450,000 payment by the district authorized in the bill would result in additional receipts to the federal government. The transfer of operation and maintenance responsibilities would have no

budgetary effects, because the district has been reimbursing the federal government for such costs.

Enactment of S. 1118 would not otherwise affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

ROBERT D. REISCHAUER,
Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1118. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1118, as reported.

EXECUTIVE COMMUNICATIONS

On June 20, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 1118. These reports had not been received at the time the report on S. 1118 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. Testimony presented by the Bureau of Reclamation at the Subcommittee hearing follows:

TESTIMONY OF DENNIS B. UNDERWOOD, COMMISSIONER OF RECLAMATION

Mr. Chairman, I am pleased to be here to present testimony on S. 1118, to provide for the transfer of the Platoro Reservoir to the Conejos Water Conservancy District and for the protection for fish habitat in the Conejos River.

Reclamation supports early repayment and transfer of project facilities when it can be demonstrated there are mutual benefits to both the contracting entities—and to the United States. We believe this to be the case with respect to S. 1118—to authorize the transfer of Platoro Reservoir.

The Bureau of Reclamation supports enactment of S. 1118. S. 1118 involves the Conejos Unit of the San Luis Valley Project, located in South Central Colorado, and Platoro Reservoir, the major facility within that unit. This measure would allow the Secretary to accept $450,000 from the Conejos Water Conservancy District as payment in full for the outstanding obligation owed to the United States under the terms of their repayment contract with the

Bureau of Reclamation. The current repayment contract obligation is about $2,300,000, but repayment is contingent upon the availability of marketable water.

It would and also address environmental concerns of instream flows on the Conejos River as well as establish a minimum pool for fish and wildlife and recreation in Platoro Reservoir. This transfer does not include the authority for management of Platoro Dam for flood control purposes.

The Conejos Water Conservancy District entered into a contract with the United States for repayment of project construction costs for Platoro Dam and Reservoir on March 31, 1949. As amended and supplemental, that contract provides for repayment under a variable repayment formula based upon the quantity of water available for use by the District in a given year. The contract provides for the District to pay the operation, maintenance, and replacement (OM&R) costs allocated to irrigation.

However, since provisions of the Rio Grande Compact prohibited the release of storage water in Platoro Reservoir from its completion in 1953 until Elephant Butte filled in 1985, and since the District had paid OM&R charges for 14 years without receiving any water except in 1958, Reclamation granted administrative relief from the OM&R charges. Since 1986, the OM&R charges have been covered by appropriated OM&R funds as flood control purposes since there was no water to meet the irrigation purpose requirements. Pursuant to the repayment contract, no payment is due on capital costs if no water is available for use by the Conservancy District.

Water was available for use by the District in 1986; but, since the District lands had essentially reverted to dry land farming due to the extended period during which irrigation water was not available, the District could not immediately generate much demand for water. However, even under these conditions, on August 15, 1986, a temporary water sales contract was executed between the United States and the District for up to 10,000 acre-feet at $2.25 per acre-foot of water. This action relieved the District of the burden of unexpectedly coming under the full impact of the OM&R and repayment obligations without the benefit of water deliveries in previous years to generate revenues.

To obtain relief from meeting its contractual obligation for the 1987 irrigation season, the District requested—and was granted—a second water sales contract. The District then requested and was granted a third temporary water sales contract for the 1988 irrigation season to allow the lump-sum payout arrangement to proceed instead of enforcing the provisions of the existing repayment contract, which would require the District to pay OM&R costs and a water charge.

The water service contract required the District to pay the allocated OM&R costs to irrigation estimated to be

$43,800 in three payments before July 15, 1988. It was stated in the contract that after the 1988 irrigation season provisions of the repayment contract would remain in force and effect. The District requested they pay only the OM&R costs allocated to irrigation for the 1989 and 1990 irrigation season on a schedule similar to the one established in the 1988 temporary water service contract.

The District was allowed to pay the OM&R costs on a schedule different than the one established by the repayment contract because the District receives payment from the water users just prior to delivery of the water during the irrigation season.

It was agreed through discussions with the District, the Albuquerque Projects Office, and the Upper Colorado Regional Office that, because of the proposed legislation to transfer the Platoro Reservoir to the District and allow a lump-sum payment of $450,000 by the District of the repayment obligation, annual payments on the repayment obligation would be held in abeyance.

Mr. Chairman, with the resumption of storage in the Platoro Reservoir, the District petitioned the United States to accept $500,000 as a lump-sum payment of the District's $2.3 million repayment obligation, and to have the United States transfer title to the dam and reservoir to the District. The $500,000 includes a credit to District for assuming the O&M costs for flood control. Reclamation entered into an "Agreement in Principle" with the District on March 21, 1988, to accept the $500,000 lump-sum payment as consideration for transfer of title to project facilities, pending congressional authorization. Later, the District agreed to maintain certain minimum flow regimen in return for reduction of the lump-sum payment to $450,000. To satisfy concerns of the U.S. Forest Service, the Colorado Division of Wildlife, and other environmental groups, the District has also agreed to maintain 1,800 acre-feet in a permanent minimum pool, and commit an additional 1,200 acre-feet of storage to guarantee instream flows.

During hearings in September of 1989 on the House companion bill, H.R. 1482, concern was voiced with respect to title transfer and related environmental compliance and liability issues. The District is no longer seeking title, but is still seeking authorization for the lump-sum payment of $450,000 of the repayment obligation and transfer of O&M responsibilities.

Reclamation supports the lump-sum payment of $450,000 for the repayment obligation, and the transfer of the dam and reservoir to the District.

I would be pleased to answer any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 1118, as reported.

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